

IN THE UNITED STATES PATENT AND TRADEMARK  
BEFORE THE TRADEMARK TRIAL AND APPEAL BO

Law Office 115

Examining Attorney: Jennifer D. Chicowski

In re application of

Concurrent Technologies Corporation

Serial No. 76/040,747

Filed May 4, 2000

TRA2  
05-19-2003  
U.S. Patent & TMO/TM Mail Rpt Dt. #26  
TRADEMARK APPLICATION

CONCURRENT TECHNOLOGIES  
CORPORATION

I hereby certify that this correspondence is being  
deposited with the United States Postal service as first  
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for Trademarks, BOX TTAB NO FEE, 2900 Crystal  
Drive, Arlington, VA 22202-3513, on

May 14, 2003

Date  
Susan A. Helburg  
Buchanan Ingersoll

**REPLY BRIEF**

This Reply Brief is made in response to the Examining Attorney's Appeal Brief  
mailed on April 24, 2003.

**Examining Attorney's Objection to New Evidence**

The Examining Attorney has objected to the introduction of the copies of  
applications and registrations obtained from the Trademark Electronic Search System  
(TESS) and the Trademark Applications and Registrations Retrieval (TARR) system  
submitted by Applicant in its Appeal Brief. (See pp. 2-3 of Examining Attorney's  
Appeal Brief).

Applicant urges the Board to recognize this evidence which was submitted in direct response to arguments and evidence raised in the Examining Attorney's Denial of Request for Reconsideration. The Examining Attorney initially brought this evidence into the record by listing the Applicant's other applications and registrations and attaching printouts of marks containing the term "Concurrent" for other goods and services. (See p. 3 and attachments to Denial of Request for Reconsideration). Applicant merely expanded on this evidence by providing a description of the goods and services identified in the records and their relevance to the instant matter.

Also, as Applicant previously stated in its Appeal Brief, five of the applications cited by the Examining Attorney had been registered within the previous six months and one published in that time (between September 2002 and February 2003). See p. 8, Applicant's Appeal Brief. Accordingly, the status of these six applications were not available prior to Applicant's filing of the Appeal (October 4, 2001) or the filing of the Request for Remand for New Evidence (November 16, 2001), nor were they relevant to the case until they were registered or published.

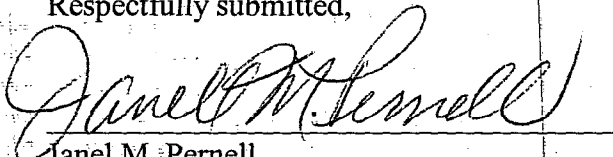
The Trademark Trial and Appeal Board can take a more permissive stance with respect to the introduction and evaluation of evidence in an ex parte proceeding than it does in an inter partes proceeding. TBMP 1208. The reasons are stated as follows:

"...the Board tolerates some relaxation of technical requirements for the introduction of evidence and focuses instead on the spirit and essence of the rules of evidence. The reason for this more relaxed approach in ex parte cases is that in an ex parte proceeding, there is no cross-examination of witnesses or any compelling need for the strict safeguards required in an inter partes proceeding [citation omitted].  
TBMP 1208.

For these reasons, Applicant submits either that the evidence was timely, as it is merely an expansion of evidence submitted by the Examining Attorney; or in the alternative, it should be given leniency and judicial notice taken due to fact that it was at least partially submitted by the Examining Attorney and the registered status was unavailable prior to the filing of the appeal.

For the foregoing reasons, Applicant respectfully requests that the Board either (1) relax the technical requirements of the evidence under TBMP Section 1208 based on the submission of the evidence by the Examining Attorney in her Denial of Request for Reconsideration, or (2) the Board once again suspend the matter and remand for additional evidence under TBMP Section 1207.02 as the evidence of registration and publication was not previously available to Applicant.

Respectfully submitted,

A handwritten signature in cursive script, reading "Janel M. Pernell", written over a horizontal line.

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